Supreme Court, U.S.
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No. 97-1282

In The

Supreme Court of the United States

October Term, 1997

LINDA STETLER,

Petitioner,

vs.

LEWIS and MARY SANDERS, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Kentucky

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

The Opinion of the Kentucky Court of Appeals contains the salient facts and the correct procedural history in this case and is found in Appendix A of the Petition. By contrast, the Petition is replete with inaccuracies and misleading statements. For this reason, the Court should be apprised of some additional background facts.

In the beginning, the parties were neighbors who lived in a small community known as Spring Creek in Albany, Kentucky. The Respondents' homes faced the Petitioner's motel-inn within a distance of 100 feet. The Respondents, Lewis and Mary Sanders, and Vernon Shelton and Jackie Shelton, are two elderly couples who had retired and moved to this community to enjoy their golden years. In order for the Respondents to gain access to their garages, they had to drive within a few feet of the of Petitioner's motel-inn. The Respondents have rights-of-ways in recorded easements to their homes.

The Petitioner is a real estate developer and motel-inn operator. She owns substantial property and has sold lots valued in excess of $500,000. She and her husband have recently executed a real estate mortgage for property in this area for $1.75 million. In the past, she has had financial backing from a millionaire businessman. She is a professional litigator and has employed five different law firms to represent her. At all times, the Petitioner was an agent of Spring Creek Enterprises, Inc.

However, the problems began when the Petitioner tried to buy the Respondents' homes and property to be a part of her real estate development-complex. Upon refusal by the Respondents to sell, the Petitioner commenced a campaign of blocking roadways and driveways, harassing telephone calls, intimidation and threats of bodily injury, allegations of carrying

deadly weapons, faking injuries and having the Respondents arrested in order to force the Respondents into selling their homes to the Petitioner. Petitioner has filed numerous civil lawsuits against the Respondents and obtained criminal warrants against the Respondents in an effort to keep the Respondents tied up in court and break them financially. As a result, the Petitioner created a war zone.

A court hearing was held and after a full day of testimony and a visit to the disputed area by the presiding trial court judge and attorneys of record, an agreement was reached to settle all disputed matters.

An Agreed Order was approved by the court on October 2, 1995. The portions of the Agreed Order in issue provide as follows:

> 1. Springcreek Enterprises, Inc., and/or its agents shall remove all barricades and obstructions on all easements, roadways or taxiways by noon, Monday, October 2, 1995 and shall not erect same in the future.
>
> * * *
>
> 3. All parties and/or agents in the above captioned, pending civil actions, shall not trespass or engage in threatening, intimidating or harassing communications or conduct in any form with respect to all other parties.
>
> * * *
>
> 5. Springcreek Enterprises, Inc. will remove the barricade at the entrance to the runway from

> Olympus Drive, a distance of 33 feet from the south edge of the concrete walk in front of the real estate office and shall also remove the existing tree stump to ground level by noon, Tuesday, October 3, 1995.

After entry of the Agreed Order, the Petitioner placed barricades in the roadway to block the Respondents from their homes.

Thereafter, Respondents moved for a contempt hearing for the Petitioner to show cause why she should not be held in contempt for violating the Agreed Order. A contempt hearing was held on November 15, 1995 which Petitioner and her attorneys did not attend. The court did hear testimony and found the Petitioner in contempt of court and gave her a 30-day sentence and a $500 per diem fine from the date of the Agreed Order of October 2, 1995 until such time as all of the barricades have been removed. The Judge, in fairness to the Petitioner, set aside the Contempt Order and scheduled a new contempt hearing on November 22, 1995 for the reason that the Petitioner could not attend the first hearing as a result of a family medical emergency.

Although the Petitioner knew that the trial judge had previously ordered a sentence and a per diem fine, the Petitioner did not file a request for a jury trial before the second contempt hearing on November 22, 1995. She had a total of 21 days notice of the contempt hearing.

At the contempt hearing, the trial judge granted the Petitioner full opportunity to be heard and she was represented by two attorneys. Petitioner freely acknowledged that she knew the terms of the Agreed Order. She admitted that she placed metal chairs in the disputed area after the Agreed Order was entered. She also conceded that she had not removed other

barricades which consisted of a chain, a cable with posts, rocks and a railroad tie that blocked entrances and rights-of-ways as required by the Agreed Order.

During the contempt hearing, two requests were made to allow evidence as to the Petitioner's violations of matters outside of Paragraph 5 and Paragraph 1 of the Agreed Order. Her attorneys either agreed or did not object to these requests.

One of the Respondents, Mary Sanders, testified that three metal chairs were placed by the Petitioner in the roadway on October 21, 1995 to block the access of her and her husband to their home. Photographs of the metal chairs and chains were introduced as exhibits.

As a part of the contempt hearing, the trial judge and attorneys made a special trip to the disputed area to inspect and view the alleged violations of the Agreed Order.

Based on the evidence, the trial judge found the Petitioner in contempt of court for violating the terms of the Agreed Order and entered the same Order for a 30-day sentence and assessed the same fine of $500 per diem until the barricades were removed on November 15, 1995.

On appeal to the Kentucky Court of Appeals, the court held that the Petitioner waived any due process claim as to notice on the grounds that her attorneys either agreed or did not object to the additional evidence. After reviewing the record, the court found that the Petitioner's testimony standing alone contained numerous admissions of violations of both the spirit and letter of the Agreed Order.

The Kentucky Court of Appeals affirmed the trial court's fine and sentence as being "petty" civil sanctions under *United*

Mine Workers v. Bagwell, 512 U.S. 821 (1994) and *International Association of Firefighters v. Lexington-Fayette Urban County Government*, Ky., 555 S.W. 2d 258 (1977). The court accurately held that nowhere in the record did the Petitioner request a jury trial. The court cited and relied upon a recent Kentucky decision, *Donta v. Commonwealth*, Ky. App., 858 S.W. 2d 719 (1993) that a jury trial is not an absolute requirement in every case. The court upheld the award of the attorney's fees in the amount of $500 but reversed the award of attorney's fees subsequent to the date of November 15, 1995. A Petition for Rehearing was denied.

Unsatisfied with the decision by the Kentucky Court of Appeals, the Petitioner filed a Motion for Discretionary Review with the Supreme Court of Kentucky which was denied by Order dated December 10, 1997.

Having lost all appeals in Kentucky, the Petitioner has filed this Petition. With the exception of only a few sentences, the Petitioner's Petition is the verbatim copy of her Motion for Discretionary Review previously filed with the Supreme Court of Kentucky which was considered and denied.

Several misleading statements in the Petitioner's Petition relate to matters clearly outside the record: (a) the reference to the Respondents' homes being destroyed by arson fires which occurred after the contempt hearing; (b) the Petitioner believes, but has no proof, that the Respondents are responsible for the "Wanted Posters" that appeared after the contempt hearing; (c) the unproven allegations of a smear campaign by the Respondents which also are not in the record; and (d) reference to airport safety regulations and purported letters from the Kentucky State Transportation Department with regard to the airport which were never introduced as exhibits at the contempt hearing. These matters cannot and should not be considered.

Moreover, the Petitioner attempts to portray herself as the innocent victim in this case. In fact, the Petitioner is a vicious persecutor who preys upon the elderly. She is motivated by greed and revenge. She never complied with the Agreed Order because she never removed all the barricades in the first place. The reason she never intended to comply with the Agreed Order is that she has no respect whatsoever for the property rights of the Respondents. Her actions prove that she has no respect for the judicial system and demonstrate that she believes herself to be above the law. In the face of the Agreed Order, she intentionally placed barricades in the roadway to block the Respondents from their homes and dared the trial court to do something about it.

REASONS FOR DENYING THE WRIT

1. The Opinion of the Kentucky Court of Appeals properly applied Federal and Kentucky law for civil contempt. Petitioner argues that both the sentence and fine levied by the trial court are serious criminal contempt sanctions and not petty civil contempt sanctions.

However, this Court in *Bagwell*, *supra*, addressed this specific issue of the distinction between civil and criminal contempt. The *Bagwell* Court held that "serious criminal contempts" involving imprisonment of more than six months do require the right to a jury trial under *Bloom v. Illinois*, 391 U.S. 194 (1968) and *Taylor v. Hayes*, 418 U.S. 488 (1974). However, the *Bagwell* Court held that civil contempt sanctions, or those penalties designed to compel future compliance with a court Order, are considered to be coercive and avoidable through obedience and thus may be imposed in an ordinary civil proceeding upon reasonable notice and an opportunity to be heard. A jury trial and proof beyond a reasonable doubt are not required.

Applying the rationale of *Bagwell*, the Petitioner in this case received a 30-day sentence which is properly classified as a "petty sanction" and, therefore, the Petitioner had no Federal Constitutional right to a jury trial.

As to the per diem fine of $500 per day, this Court held in *Bagwell* that a contempt fine is considered civil and remedial if it coerces the contemnor into compliance with the Court's Order. Speaking directly to the per diem fines, the *Bagwell* Court stated that a close analogy to coercive imprisonment is a per diem fine imposed for each day a contemnor fails to comply with an affirmative court Order. Like civil imprisonment, such fines exert a constant coercive pressure. Once the jural command is obeyed, the future, indefinite, daily fines are purged.

Applying the same rationale to the facts of this case, the Petitioner and Spring Creek Enterprise, Inc. were ordered to pay a fine in the first contempt hearing on November 15, 1998 in the amount of $500 per diem for each day of violation of the court's Order commencing with the date of the Agreed Order on October 2, 1995 and to run until such time as all obstructions were removed pursuant to that Agreed Order. The trial court later set aside the November 15, 1995 Judgment and heard new testimony. During the November 22, 1995 contempt hearing, the trial court judge found that the Agreed Order had been violated from October 2, 1995 through November 15, 1995. The trial Judge assessed the same fine of $500 per diem for that period of time against the Petitioner and Spring Creek Enterprises, Inc., jointly and severally. Thus, the fine was assessed against a substantial Kentucky Corporation and not the Petitioner alone. Spring Creek Enterprises, Inc. did not appeal the fine. The Petitioner did purge herself from future per diem fines by removing the barricades on November 15, 1995 before the second contempt hearing.

Other considerations show that the fine in this case was civil under *Bagwell*. The Petitioner's sanctionable conduct was committed within the personal knowledge of the trial judge. The Petitioner's actions did implicate the trial court's ability to maintain order and adjudicate the proceedings before it. Further, the Petitioner's contumacy involved simple and affirmative acts of merely removing barricades under an Agreed Order. Thus, the fines here were coercive day fines for a short period of time in a specific area and the Petitioner was able to purge herself by removing the barricades on November 15, 1995.

Finally, the *Bagwell* Court established the controlling rule that the right to trial by jury applies only to serious criminal sanctions and courts still may impose non-compensatory, petty fines for contempts without conducting a jury trial. By applying the *Bagwell* rule to this case, the Kentucky trial court had the authority to impose the non-compensatory, petty fines and sentence for the Petitioner's contempts without conducting a jury trial.

2. The Petitioner argues that this Court should grant certiorari in order to resolve a split among the federal circuit courts as to the question of whether an individual contemnor must be treated differently than a corporate contemnor. The alleged split is a guise which does not exist in reality and which was suggested only by the Petitioner in a desperate attempt to obtain this Writ. The so-called split between the circuits involves four cases which were all decided years *before* the *Bagwell* opinion and which have not been cited since. This is a State proceeding which does not involve any of the federal circuits. The *Bagwell* opinion answers this issue by holding that when a State's proceedings are involved, State law provides strong guidance about whether or not the State is exercising its authority in a non-punitive, non-criminal manner. In effect, the *Bagwell* Court found that the contempt issue will be decided

on a case-by-case basis because each case turns on the character and purpose of the sanction involved.

3. The Kentucky Court of Appeals' decision to affirm the trial court is supported by the Kentucky case law. In *International Association of Firefighters, supra*, the union was fined $10,000 for civil contempt without a jury trial for violating a Restraining Order. Like the Petitioner in this case, the union admitted that its members had participated in the strike in violation of the restraining order. Thus, there was no factual issue for a jury to resolve in reaching the determination that the union was in contempt. The court upheld the $10,000 fine as being a "petty" fine and not a serious criminal contempt fine.

Naturally, the Petitioner argues that the $22,000 fine is more than the $10,000 fine in *International Association of Firefighters, supra*. However, the fine here was levied against both Petitioner and a Kentucky corporation which is a major difference from a fine solely against a union. In this regard, the Respondents strongly dispute that the Petitioner has limited ability to pay the entire fine. The fine imposed on the Petitioner was "petty" with respect to her because of her substantial financial condition as evidenced by gross real estate sales over $500,000 and her recorded purchase of real property in excess of $1.75 million. She is certainly not a mere civil servant as was the county jailer in *Vaughn v. Asbury*, Ky. App., 726 S.W. 2d 315 (1987).

The courts of Kentucky have upheld payment of a civil contempt payment for compensatory damages in the amount of $65,232.89 for the violation of a restraining order issued by the trial court without a jury trial in *White v. Sullivan*, Ky. App., 667 S.W. 2d 385 (1983).

Finally, the Kentucky Court of Appeals recently upheld a criminal misdemeanor conviction by holding that a jury trial is not an absolute requirement in every criminal case. *Donta v. Commonwealth*, Ky. App., 858 S.W. 2d 719 (1993). In *Donta*, the accused never requested a jury trial and the court held that there is no Kentucky constitutional right to a jury trial in cases involving petty offenses because no such right existed in such cases in common law. As in *Donta*, the Petitioner never requested a jury trial and thereby waived her right to a trial by jury.

4. The Petitioner next argues that the Kentucky Circuit Court was manifestly erroneous in its conclusion that the Agreed Order had been violated. However, the Petitioner's own admissions conclusively establish that she violated the terms of the Agreed Order. Thus, there were no factual issues for a jury to resolve in making the determination that she was in contempt.

By agreement, the presiding trial court judge made a personal visit to the area in question during the contempt hearing and saw the barriers placed in the roadway by the Petitioner in violation of the Agreed Order and saw other barricades which had not been removed as required by the Agreed Order. In sum, the trial judge personally witnessed the acts of contempt and, therefore, the judge had actual knowledge of the violations of the Agreed Order.

5. The Petitioner challenges the award of $500 for attorney fees and claims it should only be $250. However, the record is clear that the Petitioner was found in contempt in two separate cases and attorney's fees were awarded in the amount of $250 for each case for a total of $500, which did not exceed the request in the Respondents' Motion and the trial court's inherent equitable powers under Kentucky law.

CONCLUSION

Based upon the foregoing reasons, the Respondents respectfully request that this Court deny the Petition for a Writ of Certiorari in this case.

Respectfully submitted,

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